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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. FRANCISCO PALMENO, Defendant and Appellant.	H033601 (Monterey County Super. Ct. No. SS072266)

Defendant Francisco Palmeno was convicted of three counts of lewd conduct (Pen. Code, § 288, subd. (a)) on his two granddaughters, and the jury found true an allegation that he had committed these offenses on more than one victim (Pen. Code, §§ 667.61, subd. (e)(5), 1203.066, subd. (a)(7)). He was committed to state prison to serve a term of 15 years to life. On appeal, he contends that his convictions must be reversed because the trial court abused its discretion in admitting evidence under Evidence Code section 1108 of his prior sexual offenses against his two stepdaughters over defendant's Evidence Code section 352 objection. He also contends that the court's AIDS testing order is not supported by probable cause and that the Penal Code section 290.3 fine was imposed in the wrong amount. We find no cause for reversal of his convictions, but we find merit in his other contentions. Therefore, we reverse the judgment and remand for further proceedings regarding the AIDS testing order, correction of the amount of the Penal Code

section 290.3 fine, and specification of the penalty assessments applicable to that fine. We also direct the trial court to correct a mistake on the abstract of judgment.

I. Factual Background

In the summer and fall of 2006, J. was nine years old, and M. was six years old. Their parents were separated, and their father was living with his father, defendant. Defendant provided daycare for J. and M. from January 2006 to September 2006, and he was often alone with the girls during this period while their parents were at work.

Sometime in 2006, while J. was still in school, before the summer began, defendant touched J. between her legs over her clothing while they were alone in defendant's kitchen. He repeated this conduct on a number of occasions "[m]ostly during the summer" of 2006.[1] While he was touching her, defendant sometimes called her "'[b]eautiful.'" J. responded to these touchings by running to another room where her sister and brother were located.

In August 2006, defendant began touching M.[2] On a number of occasions, when he and M. were alone in his living room, defendant would remove M.'s pants and put his finger inside her. M. would react by trying to pull her pants back up, pretending she had to go to the bathroom, and going to another room where her sister and brother were located.

In September 2006, defendant ceased providing regular childcare for the girls, although he still occasionally saw the girls "but not overnight, not by himself." This change occurred because defendant had gotten in a car accident in September 2006 with

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[1] J. apparently entered the fourth grade in August 2006. J. testified that the touchings continued "[u]ntil fifth grade." J. was in fifth grade from August 2007 to June 2008, which was well after defendant's arrest.

[2] M. testified that these events occurred when she was six years old and in kindergarten, and that they were during the regular school year rather than in the summer. M. began kindergarten in August 2006.

the girls in the car.[3] In early 2007, M. told her mother that defendant had been touching her. The touchings had stopped before M. told her mother. Defendant was never alone with either of the girls after M.'s disclosure to her mother. M.'s mother told M.'s father about M.'s disclosure. M.'s father responded to this disclosure by telling the girls that they could tell him if anyone touched them. The girls told him that no one had ever touched them.

In late May or early June 2007, the girls' father saw defendant staring at a group of young girls and "just got very bad vibes from that, the way he was looking at the girls." This observation prompted the girls' father to talk to his daughters again, and both girls made disclosures to him. The girls' father thereafter asked defendant "if it was true" what the girls had told him. Defendant responded "'and what.'" The girls' father stopped living with defendant, and he did not allow defendant any further contact with the girls. The girls' father contacted the police a couple of weeks later.

Defendant was arrested on July 24, 2007 and interviewed that day by a police officer. After the officer told him that he was accused of molesting J. and M., defendant said he had had his prostate removed five or six years earlier and could no longer get an erection. The officer told defendant that the girls were alleging touchings, and defendant initially denied touching them. Defendant suggested that the girls' father, with whom he did not get along, had told the girls to falsely accuse him. Eventually, defendant told the officer that he might have accidentally touched the vagina of one of the girls while helping her to change her clothes. Near the end of the interview, defendant said he regretted touching the girls and knew it was wrong. Defendant told the officer that he "never thought that they would actually say something." Defendant "said that he had touched them, specifically in the vagina area."

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[3] J. testified that defendant continued to babysit her after the car accident.

Defendant expressed a willingness to apologize to the girls, but, when he was provided with paper to write an apology, he said he could not write. Defendant asserted that he could not recall how many times he had touched J. and M. He admitted that the touchings had occurred in 2006, and he said he had not seen the girls for a year. "[The officer] asked him how he felt now that he had pretty much admitted to me that he had touched the girls. He said he felt much better, as if he had a -- a weight was lifted off his chest."

II. Procedural Background

Defendant was charged by amended information with two counts of lewd conduct (Pen. Code, § 288, subd. (a)) on J. and one count of lewd conduct (Pen. Code, § 288, subd. (a)) on M., and it was further alleged that defendant had committed these offenses on more than one victim (Pen. Code, §§ 667.61, subd. (e)(5), 1203.066, subd. (a)(7)). The multiple victims allegation was bifurcated at defendant's request. The jury returned guilty verdicts on all three counts and thereafter found true the multiple victims allegation. The court imposed indeterminate terms of 15 years to life for two of the three counts and a six-year term for the remaining count. The second life term and the determinate term were ordered to be served concurrent to the first life term.[4] The court also imposed a Penal Code section 290.3 fine and ordered defendant to submit to an AIDS test under Penal Code section 1202.1. Defendant filed a timely notice of appeal.

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[4] The abstract of judgment erroneously reflects that the two life terms were ordered to be served consecutively. The Attorney General asks that we order the trial court to correct this error, and we will do so.

III. Discussion

A. Admission of Evidence of Prior Sexual Offenses

1. Background

The prosecution made an in limine motion seeking admission of evidence under Evidence Code section 1108 showing that defendant had committed uncharged sexual offenses against his two stepdaughters. We will refer to his stepdaughters as SD1 and SD2. The motion asserted that SD1 would testify that defendant had raped her from the age of 13 to the age of 22, and SD2 would testify that defendant had fondled her breasts, buttocks, and genitals when she was 14 and 15 years old. The prosecutor argued that this evidence was highly probative because it showed that "defendant has previously sexually molested young, female family members in his care." The defense countered by seeking exclusion of this evidence under Evidence Code section 352. The defense maintained that this evidence had limited probative value as the alleged sexual offenses had occurred over 20 years earlier and were far more aggravated than the charged conduct, and the admission of this evidence would be unduly inflammatory.

At the in limine hearing, the trial court concluded that the proffered evidence was relevant and probative and would not be confusing to properly instructed jurors. The court's concern was that the conduct involved in the prior offenses was "of a more severe nature" than the charged conduct. The court suggested that the testimony could be limited so as to alleviate this concern. The court also expressed concern that it would be apparent to the jury that defendant had not suffered any consequences for his offenses against SD1 and SD2. Ultimately, the court concluded that the testimony of SD1 and SD2 would be admitted but that SD1's testimony would be limited. It asked counsel to meet and confer about appropriate limitations.

Counsel subsequently substantially agreed on how SD1's testimony would be restricted.[5] They agreed that SD1 would testify only that she was sexually molested "without being specific or graphic as to what that conduct was."

Before SD1 and SD2 testified, the court instructed the jury on the limited purpose for which their testimony was being admitted. The prosecutor's direct and redirect examinations of SD1 were fairly brief, and her direct and redirect examinations of SD2 were extremely brief. Defendant's trial counsel's cross-examinations of SD1 and SD2 were more extensive.

Their testimony disclosed the following. The mother of SD1 and SD2 was married to defendant and lived with him in Salinas. Until 1973, both SD1 and SD2 lived in Mexico. In 1973, SD1, who is SD2's older sister, was 12 years old. Her mother and defendant drove down to Mexico and picked her up in a car to bring her to Salinas to live with them. They stopped at a restaurant for dinner on their way back to Salinas from Mexico. SD1 was told to stay in the car because she knew no English. Defendant stayed in the car with her and moved to the backseat of the car where she was sitting. He removed her underwear and touched her. After they arrived in Salinas, defendant began touching SD1's breasts and vagina both over and under her clothes on a nearly daily basis. These touchings continued until 1982. SD1 also saw defendant touch SD2's breasts and buttocks.

SD2 was 14 years old in 1976 when she came to live with her mother in Salinas. During the one year that SD2 lived in Salinas, defendant frequently grabbed her breasts and put his hand under her clothes and his finger into her vagina. One time this caused

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[5] They disagreed only about whether evidence about SD1's complaints to others about the sexual abuse would be admissible. The court resolved this dispute by directing the prosecutor not to inquire about such complaints on direct, but allowing the prosecutor to introduce such evidence if the defense opened the door by questioning why she was only coming forward now. Defendant's trial counsel did open the door during his cross-examination.

her to bleed. While he was doing this, he would tell her that she was "very young and very pretty." These touchings occurred almost every day during the daytime. SD2 also saw defendant touching SD1. SD2 returned to Mexico after one year in Salinas.

The only defense witness at trial was the district attorney's investigator, who testified briefly about her interviews with SD1 and SD2 in 2007. The jury was given standard instructions on the Evidence Code section 1108 evidence. In her opening argument, the prosecutor discussed how the jury could utilize the testimony of SD1 and SD2. Defendant's trial counsel began his closing argument by discussing at length the "outrageousness of the claims" of SD1 and SD2. The prosecutor briefly responded in her closing argument to defendant's trial counsel's attack on the testimony of SD1 and SD2.

2. Analysis

Defendant contends that the trial court abused its discretion in admitting the testimony of SD1 and SD2 over his Evidence Code section 352 objection.[6]

"The court in its discretion *may* exclude evidence if its probative value is *substantially* outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury." (Evid. Code, § 352, italics added.) "The prejudice which exclusion of evidence under Evidence Code section 352 is designed to avoid is not the prejudice or damage to a defense that naturally flows from relevant, highly probative evidence. '[A]ll evidence which tends to prove guilt is prejudicial or damaging to the defendant's case. The stronger the evidence, the more it is "prejudicial." The

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[6] Defendant also contends that Evidence Code section 1108 violates his federal constitutional right to due process. However, he acknowledges that we are bound by the California Supreme Court's decision in *People v. Falsetta* (1999) 21 Cal.4th 903 rejecting a federal due process challenge to Evidence Code section 1108. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.) Defendant asserts that his due process challenge is raised "here to preserve [it] for potential future review in the federal courts."

"prejudice" referred to in Evidence Code section 352 applies to evidence which uniquely tends to evoke an emotional bias against the defendant as an individual and which has very little effect on the issues. In applying section 352, "prejudicial" is not synonymous with "damaging."'" (*People v. Karis* (1988) 46 Cal.3d 612, 638.) On appeal, "[t]his court reviews the admissibility of evidence of prior sex offenses under an abuse of discretion standard. [Citation.] A trial court abuses its discretion when its ruling 'falls outside the bounds of reason.'" (*People v. Wesson* (2006) 138 Cal.App.4th 959, 969 (*Wesson*).)

The trial court's initial step was to gauge the probative value of the evidence. Defendant contends that the evidence of the uncharged acts had "very limited" probative value because there were "virtually no similarities between" the uncharged and charged acts. We disagree. The charged offenses involved defendant's repeated acts of molestation over a period of months on two young female relatives left in his care. He touched J. over her clothing and removed M.'s clothing so that he could insert his finger into her. Defendant called J. "[b]eautiful" while he molesting her. The uncharged acts involved defendant's repeated acts of molestation over a period of years on two young female relatives left in his care. He touched SD1 and SD2 over and under their clothing, and he removed SD1's clothing so that he could molest her.[7] He called SD2 "very pretty" while he was molesting her. Both the charged and uncharged acts occurred primarily in defendant's home. As the uncharged acts were markedly similar to the

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[7] Defendant points out that the trial court excluded evidence that the acts of sexual molestation against SD1 and SD2 included rape and other aggravated sexual acts, and he suggests that this evidence demonstrated that the acts against SD1 and SD2 could not show a propensity to commit the less aggravated charged offenses. We disagree. The mere fact that defendant committed more aggravated offenses against SD1 and SD2 did not significantly detract from the fact that his commission of sexual offenses against them demonstrated a propensity for sexually molesting young female relatives left in his care.

charged offenses, the trial court could have reasonably concluded that evidence of the uncharged acts was quite probative of defendant's propensity for committing such acts.

The trial court's next step was to evaluate the potential for prejudice posed by evidence of the uncharged acts. The relevant factors include the "nature, relevance, and possible remoteness [of the uncharged acts], the degree of certainty of [their] commission and the likelihood of confusing, misleading, or distracting the jurors from their main inquiry, [the uncharged acts'] similarity to the charged offense[s], [their] likely prejudicial impact on the jurors, the burden on the defendant in defending against the uncharged offense[s], and the availability of less prejudicial alternatives to [their] outright admission, such as admitting some but not all of the defendant's other sex offenses, or excluding irrelevant though inflammatory details surrounding the offense[s]." (*People v. Falsetta*, *supra*, 21 Cal.4th at p. 917.) The trial court was also obligated to consider whether the uncharged acts were more inflammatory than the charged conduct, the possibility the jury might confuse the uncharged acts with the charged acts and seek to punish the defendant for the uncharged acts, and the time required to present evidence of the uncharged acts. (*People v. Harris* (1998) 60 Cal.App.4th 727, 738-739; *Wesson*, *supra*, 138 Cal.App.4th at p. 970.)

Defendant identifies four factors which he believes demonstrate that evidence of the uncharged acts was substantially more prejudicial than probative. First, he argues that the uncharged acts against SD1 and SD2 were "far more serious, far more aggressive, and far more frequent" than the charged acts against J. and M. He reasons that evidence of the uncharged acts was therefore likely to "evoke a strong emotional bias, and prejudice the jury against him." As we have already explained in our analysis of the probative value of the evidence of the uncharged acts, the evidence presented to the jury of the uncharged acts depicted those uncharged acts as quite similar to the charged acts. It is true that there were more uncharged acts than charged acts and that the uncharged acts occurred over a longer period of time than the charged acts, but this

circumstance did not appear to pose a substantial risk of prejudice. J. and M., like SD1 and SD2, were subjected to repeated acts of molestation over a lengthy period of time by their relative caregiver. The precise number of acts and length of time were not likely to play a substantial role in the jury's evaluation of defendant's culpability for this conduct.

Second, defendant points to the fact that the uncharged acts had not resulted in criminal convictions and argues that the jury might have been "tempted" to punish defendant for the uncharged acts by convicting him of the charged acts. While this circumstance may pose a risk of prejudice in some cases, the similarities between the uncharged and charged acts minimized the risk of prejudice here.

Third, defendant notes the "temporal remoteness" of the uncharged acts and suggests that this "time gap" is inconsistent with a predisposition to commit such offenses. We attach little significance to this factor here. The uncharged acts had indeed occurred a long time prior to the charged acts, but there was no evidence that defendant had been a caregiver for any young female relatives between the 1982 termination of the uncharged acts and the 2006 occurrence of the charged acts. The fact that he acted in the same fashion when given the same opportunity was indicative of a predisposition.

Fourth, defendant claims that evidence of the uncharged acts should have been excluded as unduly time consuming. The very limited nature of the evidence of the uncharged acts that the trial court permitted to be presented did not, at least at the time the trial court ruled on defendant's objection, appear to pose a risk of being unduly time consuming. The prosecutor's examinations of SD1 and SD2 were brief, and it was only defendant's trial counsel's extensive cross-examinations that led to any significant consumption of time. Under these circumstances, the trial court could have reasonably concluded that admission of evidence of the uncharged acts would not be unduly time consuming.

In sum, the trial court did not abuse its discretion in determining that the significant probative value of the evidence of the uncharged acts was not "substantially outweighed" by the minimal risk of undue prejudice to defendant.

B. AIDS Testing Order

Defendant challenges the trial court's order that he submit to AIDS testing. He contends that the record does not contain "probable cause" to support such an order.

"[T]he court shall order every person who is convicted of . . . a sexual offense listed in subdivision (e) . . . to submit to a blood or oral mucosal transudate saliva test for evidence of antibodies to the probable causative agent of acquired immune deficiency syndrome (AIDS) within 180 days of the date of conviction." (Pen. Code, § 1202.1, subd. (a).) "(e) For purposes of this section, 'sexual offense' includes any of the following: . . . (6)(A) Any of the following offenses if the court finds that there is probable cause to believe that blood, semen, or any other bodily fluid capable of transmitting HIV has been transferred from the defendant to the victim: . . . (iii) Lewd or lascivious conduct with a child in violation of Section 288." (Pen. Code, § 1202.1, subd. (e).) Hence, a Penal Code section 288, subdivision (a) offense may justify an AIDS testing order only "if the court finds that there is probable cause to believe that blood, semen, or any other bodily fluid capable of transmitting HIV has been transferred from the defendant to the victim."

At the end of the sentencing hearing, the following colloquy occurred between the trial court and the prosecutor. "[THE COURT:] And, are there any other sentencing elements, then, to address for Mr. Palmeno? [¶] MS. JOHNSON: Yes. Ms. Kenyon [the probation officer] pointed out to me that there's not a request for the 1202.1 designation, which is mandatory. [¶] THE COURT: Yes. Okay. So Mr. Palmeno will also submit to a test for H.I.V. antibodies . . . ." The court's minute order directed defendant to "[c]omplete an AIDS test pursuant to PC 1202.1."

Defendant asserts that the record does not contain "probable cause" that any "bodily fluid" was transferred from defendant to J. or M. We are compelled to agree. J. was touched only over her clothing. Although defendant inserted a finger into M., there was no evidence whatsoever that his finger bore any "bodily fluid capable of transmitting HIV." The Attorney General speculates that it is "not unreasonable" to infer that defendant's finger might have been "cut" when he placed it inside M. Sheer speculation is not evidence, and it cannot form a basis for probable cause. (See *People v. Guardado* (1995) 40 Cal.App.4th 757, 765 [rejecting Attorney General's argument that probable cause to support an AIDS testing order could be premised on speculation "that there may have been acts *other than those shown by the trial evidence* which involved the exchange of bodily fluids."].) As there is no evidence to support the court's AIDS testing order, the appropriate remedy is to remand the matter to the trial court to give the prosecution the opportunity to offer evidence to support such an order. (*People v. Butler* (2003) 31 Cal.4th 1119, 1129.)

C. Penal Code Section 290.3 Fine

Defendant contends that the trial court erred in imposing a $300 Penal Code section 290.3 fine rather than a $200 Penal Code section 290.3 fine because it was not established that his offenses occurred after the Legislature increased the fine to $300 on September 20, 2006.

Until September 20, 2006, Penal Code section 290.3 provided: "Every person who is convicted of any offense specified in subdivision (a) of Section 290 shall, in addition to any imprisonment or fine, or both, imposed for violation of the underlying offense, be punished by a fine of *two hundred dollars ($200)* upon the first conviction or a fine of three hundred dollars ($300) upon the second and each subsequent conviction, unless the court determines that the defendant does not have the ability to pay the fine."

(Former Pen. Code, § 290.3, subd. (a), italics added; Stats. 1995, ch. 91, § 121; Stats. 2006, ch. 69, § 27 (eff. July 12, 2006).)

Effective September 20, 2006, Penal Code section 290.3 was amended to provide: "(a) Every person who is convicted of any offense specified in subdivision (a) of Section 290 shall, in addition to any imprisonment or fine, or both, imposed for violation of the underlying offense, be punished by a fine of *three hundred dollars ($300)* upon the first conviction or a fine of five hundred dollars ($500) upon the second and each subsequent conviction, unless the court determines that the defendant does not have the ability to pay the fine." (Former Pen. Code, § 290.3, subd. (a), italics added; Stats. 2006, ch. 337, § 18, eff. Sept. 20, 2006.)

The ex post facto clauses of the United States and California Constitutions do not permit a defendant to be punished under a statute that took effect after he committed his offenses. (*People v. Hiscox* (2006) 136 Cal.App.4th 253, 257 (*Hiscox*).) The Attorney General concedes that a Penal Code section 290.3 fine is punishment. "[I]t is the prosecution's responsibility to prove to the jury that the charged offenses occurred on or after the effective date of the statute providing for the defendant's punishment. When the evidence at trial does not establish that fact, the defendant is entitled to be sentenced under the formerly applicable statutes . . . ." (*Hiscox*, at p. 256.) "A prosecutor who relies on generic testimony to support a child molestation charge must establish a time frame for the offenses sufficient to bring them within the scope of any statutory or constitutional limitation on punishment." (*Hiscox*, at p. 260.) Where "the jury was not asked to make findings on the time frame within which the offenses were committed, the verdicts cannot be deemed sufficient to establish the date of the offenses unless the evidence leaves no reasonable doubt that the underlying charges pertained to events occurring [after the effective date of the punishment statute]." (*Hiscox*, at p. 261.)

Here, as in *Hiscox*, the jury was not asked to make a finding as to whether any of the offenses occurred after September 20, 2006. Thus, the imposition of punishment

under the amended version of former Penal Code section 290.3 may be upheld only if the "evidence leaves no reasonable doubt" that at least one of defendant's offenses occurred after September 20, 2006. The amended information alleged that defendant had committed each of the three counts "[o]n or about JUNE 1, 2006 THROUGH OCTOBER 31, 2006." Obviously, this time frame encompassed a period before September 20, 2006. J. testified that defendant began touching her in 2006 during the school year before summer began, and the touchings continued for an extended period of time thereafter. Her testimony that the touchings continued until she was in fifth grade was clearly inaccurate as defendant was arrested before J. entered the fifth grade. M. testified that defendant began touching her in August 2006, and the only information she provided about when these touchings ended was that they had ceased before she told her mother in December 2006 or January 2007. The girls' father testified that defendant ceased providing daycare for the girls in September 2006 after defendant got into a car accident with the girls in the car. The girls' father also testified that defendant was never alone with the girls after the September 2006 car accident.

The precise date of defendant's September 2006 car accident was not in evidence, but a reasonable factfinder could have accepted the girls' father's testimony and concluded that the touchings ceased at that time. This circumstance precludes us from concluding that there is "no reasonable doubt" that at least one of defendant's offenses occurred after September 20, 2006. "For a court to hypothesize which acts the jury may have based its verdicts on, or what dates might be attached to certain acts based on ambiguous evidence, would amount to 'judicial impingement upon the traditional role of the jury.'" (*Hiscox*, *supra*, 136 Cal.App.4th at p. 261.) Because the jury was not asked to resolve whether the touchings upon which it based its guilty verdicts occurred before or after September 20, 2006, and the record does not establish beyond a reasonable doubt that at least one touching occurred after this date, we cannot conclude that defendant's offenses occurred after Penal Code section 290.3 was amended to provide for a $300 fine

rather than a $200 fine. The result is that the trial court was precluded from imposing a $300 fine rather than a $200 fine.

Defendant asks us to remand the matter to the trial court so that the trial court can impose a $200 Penal Code section 290.3 fine rather than a $300 Penal Code section 290.3 fine and so that the trial court can recalculate the applicable penalty assessments.[8] The Attorney General asks us to remand the matter so that the trial court can specify the statutory basis for each of the penalty assessments.

At the sentencing hearing, the following exchange occurred between the trial court and the probation officer. "[THE COURT:] I have a question, Ms. Kenyon: On the Penal Code section 290.3 fine that's noted in the probation report, my understanding is it's a minimum $300, under 290.3. Is the 1,080 a -- does that represent fines and penalty assessments? [¶] PROBATION OFFICER: It does, Your Honor. [¶] THE COURT: Okay. So that's -- at a base fine of $300, when you add the penalties and assessments, it is a total of $1,080; is that correct? [¶] PROBATION OFFICER: That is correct, Your Honor. And that's coming from a memorandum that we received from the Superior Court. [¶] THE COURT: Okay. So I will impose the base fine minimum of $300 under 290.3, for a total of $1,080 with the addition of penalties and assessments on that base fine."

Penal Code section 290.3 fines are currently subject to an assessment of $5 for each $10 of fine under Government Code section 70372, an assessment of $5 for each $10 of fine under Government Code section 76000, an assessment of $1 for each $10 of

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[8] Defendant notes that the trial court could have imposed Penal Code section 290.3 fines for each of the three convictions, rather than just for one conviction. He asserts that the trial court's failure to impose Penal Code section 290.3 fines for the other two convictions was an implied determination that he lacked the ability to pay any additional amounts. He claims that the prosecution's failure to object has waived any challenge to the trial court's failure to impose additional fines. The Attorney General does not challenge these assertions.

fine under Government Code section 76104.6, an assessment of $1 for each $10 of fine under Government Code section 76104.7, an assessment of $10 for each $10 of fine under Penal Code section 1464, and an assessment of 20 percent of the fine under Penal Code section 1465.7. (*People v. Valenzuela* (2009) 172 Cal.App.4th 1246, 1249 (*Valenzuela*); *People v. Walz* (2008) 160 Cal.App.4th 1364, 1371-1372 (*Walz*); Gov. Code, §§ 76104.6, 76104.7.) Thus, the applicable penalty assessments currently add up to an additional 240 percent on top of the Penal Code section 290.3 fine. A $200 fine would be subject to a penalty assessment of $480 for a total of $680. Defendant does not contend that these penalty assessments are inapplicable to him. Since a trial court is obligated to specify the amounts of the various assessments, we will remand the matter for that purpose. (*Valenzuela*, at pp. 1249-1250; *Walz*, at pp. 1370-1371.)

D. Error In Abstract of Judgment

Because the abstract of judgment erroneously reflects that the second life term was ordered to be served consecutive, rather than concurrent, to the first life term, we must direct the trial court to prepare an amended abstract of judgment correcting this mistake.

IV. Disposition

The judgment is reversed, and the matter is remanded to the trial court with directions to (1) permit the prosecution the opportunity to offer evidence to support an AIDS testing order and (2) prepare an amended abstract of judgment which (a) reflects that the Penal Code section 290.3 fine is $200, (b) specifies the applicable penalty assessments on that fine, and (c) specifies that the second life term is to be served concurrently rather than consecutively. The trial court shall forward a certified copy of the amended abstract to the Department of Corrections and Rehabilitation.

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Mihara, J.

WE CONCUR:

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Bamattre-Manoukian, Acting P. J.

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McAdams, J.